

### **REMARKS/ARGUMENTS**

Applicant thanks the Examiner for their careful review of this application. Claims 1-5, 7-8 and 17-28 have been rejected. No amendments to the application have been made. It is submitted that the pending claims define allowable subject matter. Applicants respectfully request reconsideration of the application in view of the following remarks submitted in support thereof.

### **EXAMINER'S OBJECTIONS REGARDING "SUPPORT IN THE ORIGINAL DISCLOSURE FOR THE NEW/AMENDED CLAIMS" AND "UNCERTAINTIES" IN THE CLAIMS**

In Section 4 of the Final Office Action, the Examiner states "with respect to newly added or amended claims, applicant fails to point out support in the original disclosure for the new/amended claims."

Applicants respectfully note that support for the amendment to Claim 1, namely "the message indicating availability of the said first server," can be found at page 35 in the specification of the present application, lines 12-18. In view of the foregoing, Applicants believe that the Examiner's objection has been overcome and, therefore, respectfully request that the objection directed at Claim 1 be withdrawn.

In Sections 5 and 6 of the Final Office Action, the Examiner states that a limitation of a claim "seems to describe that the client is redirect[ed] via a failed server to a second server, raising some uncertainties."

Applicants respectfully point out that the use of “via said first server” in the step “redirecting said client unit via said first server to a second server of said plurality of servers having said most recently accessed session” of Claim 1 means the redirecting occurs “by way of” the first server not “by the first server,” the latter implying that the first server is doing the actual redirecting. In view of the foregoing, Applicants believe that the Examiner’s objection has been overcome and, therefore, respectfully request that the objection directed at Claim 1 be withdrawn.

### **DISCUSSION OF REJECTION OF CLAIMS 1- 5, 7-8 AND 17-27**

#### **UNDER 35 U.S.C. § 103(a)**

In Section 8 of the Final Office Action, the Examiner rejected Claims 1-5, 7-8 and 17-27 under 35 U.S.C. § 103(a) as being unpatentable over Narendran in view of Andresen in further view of High Availability & Scalability with Dominos Clustering and Partitioning on AIX, Sept. 1998 (hereinafter referred to as IBM).

The Examiner’s rejection is respectfully traversed. As explained below, the rejection has failed to establish a prima facie case of obviousness for the present application. In order to establish a prima facie case of obviousness, the rejection must demonstrate that (1) the cited references teach all of the claimed elements and limitations; (2) there is a suggestion or motivation in the prior art to modify or combine the reference teachings; and (3) there is a reasonable expectation of success. MPEP § 2143; *In re Vaeck*, 20 USPQ2d 1438 (Fed. Cir. 1991).

Specifically, the cited references, as combined, do not teach each and every element of the claimed invention. Furthermore, the rejection has failed specifically to identify the

principles, known to one of ordinary skill in the art or found in the cited references themselves that suggest or motivate the combination of the cited references.

**A Prima Facie Case Of Obviousness Is Not Established As To Independent Claim 1 Since The Combined Cited References Do Not Teach Or Suggest All Of Its Claimed Elements And Limitations**

Independent Claim 1 includes a “most recently accessed session,” “determining a most recently accessed session of plurality of sessions on said plurality of servers,” and:

“determining at said first server a location of said most recently accessed session on one of said plurality of servers;”

“redirecting said client said client unit via said first server to a second server of said plurality of servers having said most recently accessed session;” and

“wherein redirecting is executed when said first server fails to respond to said client unit with a message, the message indicating availability of said first server, and said redirecting of said client unit to said second sever maintains access to said accessed session while continuing said plurality of services to said client unit so as to eliminate a single point of failure.”

First, as acknowledged by the Examiner, no where does Narendran teach or suggest a “most recently accessed session” or “determining a most recently accessed session of a plurality of sessions on said plurality of servers.” (see Section 8 of Final Office Action Examiner stating, “Narendran does not explicit[ly] teach ... determining the most recently accessed session of a plurality of session[s] on said plurality of servers.”)

Second, no where does Andresen teach or suggest a “most recently accessed session” or “determining a most recently accessed session of a plurality of sessions on said plurality of servers.” Rather Andresen teaches a “most recently accessed host.” (see Andresen, Section

1, paragraph 3, “DNS [name] caching enables a local DNS system to cache the name-to-IP address mapping, so that most recently accessed **hosts** can quickly be mapped.” (emphasis added)). Applicants respectfully point out that a “host” is not the same as a “session” and, therefore, the two are not interchangeable. A “host” is a computer that is connected to a network. A “session” is, as pointed out in the present application, “a representation of those services that are executing on behalf of a user at any point in time.” *See* page 5, lines 18-20 of the present application. Therefore, because Andresen does not teach or suggest a “most recently accessed session” or “determining a most recently accessed session of a plurality of sessions on said plurality of servers,” it does not (and indeed, cannot) teach or suggest “determining at said first server a location of said most recently accessed session,” “redirecting said client unit via said first server to a second server of said plurality of servers having said most recently accessed session,” or “said redirecting of said client to said second server maintains access to said accessed session.”

Finally, the Examiner erroneously concludes that the claims of the present application would be obvious in light of the prior art based, in part, on the combination of Narendran and Andersen because Andersen provides a limitation of Claim 1 in the present application (“determining a most recently accessed session of a plurality of sessions on said plurality of servers”) that is missing from both Narendran and IBM. The Examiner is correct, in that no where does IBM teach or suggest a “most recently accessed session” or “determining a most recently accessed session of a plurality of sessions on said plurality of servers.” IBM teaches providing synchronized redundancy of critical system components by clustering them. Again, because IBM does not teach or suggest a “most recently accessed session” or “determining a most recently accessed session of a plurality of sessions on said plurality of servers,” it does not (and indeed, cannot) teach or suggest “determining at said first server a

location of said most recently accessed session,” “redirecting said client unit via said first server to a second server of said plurality of servers having said most recently accessed session,” or “said redirecting of said client to said second server maintains access to said accessed session.”

The foregoing demonstrates that the cited primary references of Narendran, Andersen, and IBM alone, or in combination, do not teach or suggest all of the elements and limitations of independent Claim 1. Consequently, the Examiner’s rejection fails to establish a prima facie case of obviousness for the present application and Applicants respectfully request that the 103 rejection be withdrawn.

**A Prima Facie Case Of Obviousness Is Not Established As To Independent  
Claim 1 Because Of A Failure By The Examiner To Provide Any Motivation Or  
Suggestion To Combine The Cited References**

“Under section 103, teachings of references can be combined only if there is some suggestion or incentive to do so.” *ACS Hospital Sys., Inc. v. Montefiore Hospital*, 221 USPQ 929, 933 (Fed. Cir. 1984). In accordance with this rule, an Examiner imposing an obviousness rejection must articulate a rationale by which a person of ordinary skill in the relevant art would have been motivated to combine the references to arrive at the claimed invention. See M.P.E.P. § 2143.01. The suggestion to combine the teachings of the cited references may be found in one or more of the references themselves, the knowledge or persons of ordinary skill in the art, or the nature of the problem to be solved. *In re Rouffet*, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998). Moreover, a disclosure in the prior art that teaches away from, or discourages, the making of a combination or references cited by the Examiner can undermine prima facie obviousness. See MPEP § 2143.01 (“where teachings

of two or more prior art references conflict, the examiner must weigh the power of each reference to suggest solutions to one of ordinary skill in the art considering the degree to which one reference might accurately discredit another”; see also *In re Young*, 18 USPQ2d 1089 (Fed. Cir. 1991). A reference teaches away “when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.” *In re Gurley*, 31 USPQ2d 11130, 1131 (Fed. Cir. 1994).

An explicit suggestion and motivation not to combine the teachings of Narendran and Andersen is found in Narendran. In the rejection, as discussed above, the Examiner erroneously concludes that the claims of the present application would be obvious in light of the prior art based, in part, on the combination of Narendran and Andersen because Andersen provides a limitation of Claim 1 in the present application (“determining a most recently accessed session of a plurality of sessions on said plurality of servers”) that is missing from both Narendran and IBM.

Assuming arguendo that Andersen did teach the “determining the most recently accessed session of a plurality of sessions on said plurality of servers” limitation of Claim 1 in the present application, which it does not, Narendran explicitly discourages the combining of its teachings with Andersen. For example, Narendran outlines the shortcomings of prior art systems by stating generally, at Col. 1, lines 26-29, that “a high degree of load balance may not be achieved due to DNS name caching at different places in the network. This DNS name caching will also prevent the clients from tolerating server failures.” Narendran then states at Col. 1, line 45 to Col. 2, line 4, regarding the system disclosed in Andersen, that “[a]lthough this system alleviates the problem of DNS name caching through the use of server redirection, the increase in the throughput is still limited by the dynamic redirection

and the need to go over the network to fetch documents. Furthermore, failures are still a problem due to the use of DNS name caching.” Narenden clearly discourages the teachings of Andresen and the Examiner’s rejection does not address this conflict. As previously mentioned a reference teaches away and as result, can undermine a prima facie case of obviousness when a person of ordinary skill, upon reading the reference, would be discouraged from following the teachings set out in the reference.

Consequently, the Examiner’s rejection fails to establish a prima facie case of obviousness for independent Claim 1 of the present application and Applicants respectfully request that the 103 rejection be withdrawn.

**A Prima Facie Case Of Obviousness Is Not Established As To**  
**Claims 2-5, 7-8 and 18-27 Under 35 U.S.C. § 103(a)**

Claims 2-5, 7-8 and 18-27 depend from independent Claim 1. As these claims depend from an allowable base claim, based on the foregoing, they too are patentable over Narendran in view of Andresen in further view of IBM.

The Examiner’s rejection is respectfully traversed. For at least the reasons stated above regarding the Applicants submission that independent Claim1 is patentable under 35 U.S.C. § 103(a) over Narendran in view of Andresen in further view of IBM. Claims 2-5, 7-8 and 18-27, each of which depends directly or indirectly from independent Claim 1, are likewise patentable under 35 U.S.C §103(a) over Narendran in view of Andresen in further view of IBM.

Accordingly, Applicant respectfully requests the Examiner to withdraw the 35 U.S.C. §103(a) rejection for pending Claims 2-5, 7-8 and 18-27.

**DISCUSSION OF REJECTION OF CLAIM 28 UNDER 35 U.S.C. § 103(a)**

In Section 9 of the Final Office Action, the Examiner rejected Claim 28 under 35 U.S.C. § 103(a) as being unpatentable over Narendran-Andresen in view of IBM in further view of Dean et al. (U.S. Patent No. 6,023,762). The Examiner's rejection included a statement that "[r]egarding claim 28, [it] comprises limitations [that] are substantially the same a claim1, [and therefore the] same rationale of rejection is applicable."

The Examiner's rejection is respectfully traversed. For at least the reasons stated above regarding the Applicants submission that independent Claim 1 is patentable under 35 U.S.C. § 103(a) over Narendran-Andresen in view of IBM, Claim 28 is patentable under 35 U.S.C § 103(a) over Narendran-Andresen is view of IBM in further view of Dean et al.

Accordingly, Applicant respectfully requests the Examiner to withdraw the 35 U.S.C. § 103(a) rejection for pending Claim 28.

**DISCUSSION OF EXAMINER'S RESPONSE TO ARGUMENTS**

In Section 10 of the Final Office Action, the Examiner responded to Applicants remarks submitted in the amendment filed by Applicants on June 15, 2005. The Examiner's response to those remarks addresses "the breadth of the claim clause 'a message indicating availability'" in light of the teachings of IBM where, as asserted by the Examiner, a user's request is redirected to the best available server when a first server becomes unavailable, a server's availability is determined using probes, or a server fails to respond to a service request.



Applicants have considered the Examiner's response and respectfully note that the subject matter of the claims in the present application is not the subject matter of IBM, as discussed above.

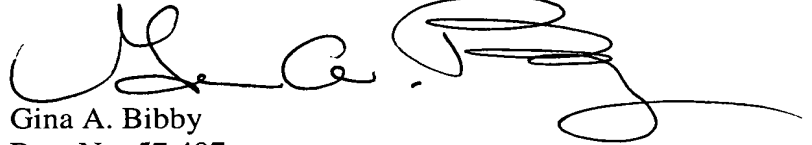
### **CITED REFERENCES**

The references that the Examiner considers pertinent to Applicant's disclosure but does not rely upon have been reviewed. However, it is submitted that none of the references, either taken alone or in combination with each other or the references relied upon, negatively affects the patentability of the present application as defined by the claims.

### **CONCLUSION**

In view of the foregoing, the Applicant respectfully submits that all the pending Claims 1-5, 7-8 and 17-28 are in condition for allowance. Accordingly, a Notice of Allowance is respectfully requested. The Applicants respectfully note that two prior Requests for Continued Examination (RCEs) have been filed for the present application and the Applicants believe that the present application is in condition for appeal. Therefore, Applicants respectfully request that before the Examiner issues another action, they contact the undersigned at (408) 749-6920 to discuss such an action. If any additional fees are due in connection with filing this amendment, the Commissioner is also authorized to charge Deposit Account No. 50-0805 (Order No. SUNMP576). A duplicate copy of the transmittal is enclosed for this purpose.

Respectfully submitted,  
MARTINE PENILLA & GENCARELLA, L.L.P.

A handwritten signature in black ink, appearing to read 'Gina A. Bibby', with a long horizontal flourish extending to the right.

Gina A. Bibby  
Reg. No. 57,407

Martine Penilla & Gencarella, LLP  
710 Lakeway Drive, Suite 200  
Sunnyvale, California 94085  
Telephone: (408) 774-6920  
**Customer Number 32291**